IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No. 190 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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COMMISSIONER OF INCOME TAX - Applicant(s)
Versus
KARSANDAS BECHARDAS AND SONS - Respondent(s)

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Appearance :
MR MANISH R BHATT for Applicant(s) : 1,
SERVED BY RPAD - (N) for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.R. SHAH)

The following question is referred by the Income Tax Appellate Tribunal, at the instance of the Revenue, for our opinion;

> *"Whether, the Appellate Tribunal is right in law and on facts in deleting the motor car allowance paid by the firm to its partners disallowed by the Assesssing Officer u/s. 40(b) of the I.T. Act ?"*

2. Heard Shri B.B. Naik, learned counsel appearing on behalf of the Revenue. Though served, nobody appears on behalf of respondent assessee.

3. The assessee was a firm engaged in manufacture of textile machineries. During calendar year 1984, i.e., Assessment Year 1985-86, the assessee firm paid motor car allowance of Rs. 1000 per month to its two partners. Before the Income Tax Officer, it was submitted that instead of incurring expenditure on running and maintenance of motor cars

in regard to the said partners it was thought it fit to allow monthly allowance to the partners. It was also submitted before the Income Tax Officer that the allowance was actually in the form of reimbursement of petrol expenses etc., incurred for the purpose of business with the ceiling of Rs. 1,000/- per partner per month. The Income Tax Officer disallowed the motor car allowance paid to the partners considering the provisions of Section 40(b) of the Income Tax Act by holding that the same is not allowable. On appeal, at the instance of the assessee, the Commissioner of Income Tax (Appeals) held that the provisions of Section 40(b) were not applicable as they prohibit any deduction on any payment of interest, salary, bonus, commission or remuneration made by a firm to any partner of a firm and that it does not restrict such allowance from actual expenditure being paid to a partner, and accordingly he deleted the addition of Rs. 24,000/-. On further appeal, the Income Tax Appellate Tribunal, concurred with the view of the C.I.T. (Appeals) by reiterating and holding that the provisions of Section 40(b) of

the Income Tax Act are not applicable and the finding given by the C.I.T. (Appeals) is correct.

4. Shri B.B. Naik, learned counsel appearing on behalf of the Revenue, has submitted that both the C.I.T. (Appeals) and the Tribunal have materially erred in holding that Section 40(b) of the I.T. Act is not applicable in the facts of the case, i.e., to say that the amount paid to the partners towards motor car allowance is not allowable.

5. Section 40(b) of the Act, refers to any payment of interest, salary, bonus, commission or remuneration made by a firm to any partner of a firm and only those payment shall not be deducted in computing the income chargeable under Section 40. If any facility of providing a motor car is given to the partners of a firm, then the expenditure could be deducted. However, the contention that motor car allowance being paid to the partners will not be allowable, cannot be accepted. On facts and considering the provisions of Section 40 sub-clause

(b), both the C.I.T. (Appeals) and the Tribunal were justified in holding that Section 40(b) would not be applicable and they have rightly held so in allowing the deduction. We hold that the Tribunal was right in deleting the motor car allowance paid by the firm to its partners disallowed by the Assessing Officer under Section 40(b) of the Income Tax Act. We answer the Reference accordingly against the interest of the Revenue and in favour of the assessee. The Reference stands disposed of accordingly. No costs.

[R.S. Garg, J.]

[M.R. Shah, J.]

RMR.